

Editor's note: Reconsideration denied by Order dated June 12, 1984

THOMAS CONNELL

IBLA 83-562

Decided April 6, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, NM-A 56420.

Affirmed as modified as remanded.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
Applications: Filing

Where an automated simultaneous oil and gas lease application Part B (Form 3112-6a) bears a different identification number in the space designated "MARK SOCIAL SECURITY NUMBER" than the identification number entered on Part A (Form 3112-6), the lease application is not properly completed and must be deemed unacceptable.

APPEARANCES: Thomas Connell, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Thomas Connell appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 7, 1983, rejecting simultaneous oil and gas lease application, NM-A 56420, for failure to properly complete the automated application form (3112-6a).

Appellant submitted an automated simultaneous oil and gas lease application for 24 parcels in the February 1983 drawing. The application was accompanied by a filing fee of \$1,800 (\$75 per parcel). The application was selected with first priority for parcel NM-235. Part B of the application, Form 3112-6a (June 1981), included a section designated "Mark Social Security Number." The computer-read darkened circles in this section of Part B of appellant's application gave his identification number as 563115456, which did not match the number appearing in the "Social Security Number" section of Part A of appellant's application (563125456). BLM cited 43 CFR 3112.2-1(g) (1982) and 3112.6-1(a) (1982) as controlling and rejected the application as improperly completed. BLM also made reference to Instruction Memorandum No. 82-193, dated January 8, 1982, which states in part that "no Part B [Form 3112-6a] will be accepted unless * * * it has a correctly completed (darkened circle) social security number, employer identification number or Bureau of Land Management application (BAN) number."

In his statement of reasons on appeal appellant contends that the rejection of his application was arbitrary in that the fact of having an erroneous social security number on Part B of his application was cured by the correct number on Part A.

We observe generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976). The Department has promulgated regulations which provide for the simultaneous filing of applications to be drawn for priority of consideration. 43 CFR Subpart 3112.

In the past the Board has consistently held that failure to properly complete the information required on a simultaneous oil and gas lease application renders the filing defective and requires rejection of the offer under 30 U.S.C. § 226(c) (1976); 43 CFR 3112.6-1(a) (1982); H. L. McCarroll, 55 IBLA 215, 216 (1981). The regulations in effect when appellant's application was filed provided that an application consists of an approved form "completed, signed and filed pursuant to the regulations in this subpart" and required that the "properly completed and signed lease application be filed in the proper office of the Bureau of Land Management." 43 CFR 3112.2-1(a) and (g) (1982) (emphasis added). 1/

Beginning on July 1, 1982, the form approved by the Director, BLM, for use in the New Mexico State Office is the automated simultaneous oil and gas lease application Forms 3112-6 and 3112-6a. 47 FR 23815 (June 1, 1982). A simultaneous oil and gas lease application must be filed on a form approved by the Director, BLM. The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications.

The application consists of two forms, Part A and Part B. Part A, which is to be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name, address, and identification number. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them. Although the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number (SSN), a business entity's employer identification number (EIN), or a BLM assigned number (BAN). The number entered on Part A is coordinated with all subsequently filed Part B forms.

The instructions on Part A of automated Form 3112-6 provide: "If an applicant has no SSN or EIN or does not wish to disclose such a number, leave the Social Security Number block blank. BLM will assign an applicant number which must be used for all future filings." A notice appearing on both Parts A and B reads, "The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires

1/ The current regulation, effective Aug. 22, 1983, provides that an applicant shall enter on the simultaneous application his social security number or, in lieu thereof, his BAN supplied by BLM. 43 CFR 3112.2-1(e). 48 FR 33678 (July 22, 1983).

us to inform you that: This information is being collected to enter this application in an automated drawing. This information will be used to establish priority. The obligation to respond is required to obtain a benefit."

[1] All Part B filings must correspond with a Part A filing on record. Part B instructions direct the applicant to "print in the appropriate squares the number used by the applicant on Part A and mark the corresponding circles." (Emphasis supplied.) As the Board noted in Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983), the new forms were adopted to accommodate the automated processing of simultaneous oil and gas lease applications in order to expedite lease issuance and reduce the paperwork burden on the public. Entry of the appropriate identification number in a form which is machine readable (by darkening the appropriate circles) is required to relate the successful application to the applicant whose name and address appear on Part A of the application on file. Satellite Energy Corp., supra. 2/ Without using the same number as used in Part A, Part B cannot be efficiently processed. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted.

The regulation at 43 CFR 3112.6-1(a) (1982) clearly provided that an application would be rejected if not filed in accordance with section 3112.2. 43 CFR 3112.2-1(g) (1982) required that applications be "properly completed." When dealing with the Government, a person is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 322 U.S. 380 (1947). Appellant was on notice that the approved form, 3112-6a, must be properly completed. We cannot condone a departure from an otherwise consistent policy of not accepting applications that do not conform to the Department's regulations. A "qualified applicant" is not merely one who is qualified to hold an oil and gas lease. A "qualified applicant" must also have completed and filed a valid application. Fen F. Tzeng, 68 IBLA 381, 386 (1982).

Subsequent to the drawings involved in these appeals, BLM adopted revised regulations governing the simultaneous filing procedures which were specifically designed for administration of the automated simultaneous filing process. Thus, the regulations were revised to provide at 43 CFR 3112.3(a) that:

(a) Any Part B application form which, in the opinion of the authorized officer:

(1) Is not timely filed in the Wyoming State Office; or

(2) Is received in an incomplete state or prepared in an improper manner; or

2/ In Satellite Energy Corp., supra, the Board held that where the proper identification number was marked in the circles in a form which was machine readable the application was properly completed and the failure to write out the digits of the number was an inconsequential omission not requiring rejection.

(3) Is received in a condition that prevents its automated processing; or

(4) Is received with an insufficient fee: shall be returned to the remitter as unacceptable.

48 FR 33679 (July 22, 1983). In the context of the automated simultaneous filing procedure where one Part B application may describe numerous parcels involving thousands of dollars in filing fees, the distinction between an application returned as unacceptable and an application rejected is significant since in the latter case all filing fees are retained by BLM whereas in the former case a single \$75 processing fee is retained and the balance of the fees returned. 43 CFR 3112-3(b), 48 FR 33679 (July 22, 1983). Subsequently, the regulation at 43 CFR 3112.3(a) defining an "unacceptable" application has been further revised:

(a) Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it:

(1) Is not timely filed in the Wyoming State Office; or

(2) Is received in an incomplete state or prepared in an improper manner that prevents automated processing; or

(3) Is received in a condition that prevents automated processing; or

(4) Is received with an insufficient fee.

49 FR 2113 (Jan. 18, 1984).

In a recent case considered en banc by this Board, Shaw Resources, Inc., 79 IBLA 153, 91 I.D. ____ (1984), we held that the scope of the definition of an application which is prepared in a manner that "prevents automated processing" is broad enough to include applications with mismatched identification numbers on Part A and Part B. Further, the Board held that the regulation defining such applications as unacceptable is phrased in mandatory terms and that such applications must be deemed "unacceptable" under the revised regulations whether or not the defect is discovered prior to inclusion of the application in the selection process. 79 IBLA at 176-77, 91 I.D. at _____. Because the application of these revised regulations to appellant's case would benefit appellant by requiring that his part B application be treated as unacceptable, thus mandating refund of fees less a \$75 filing fee for the unacceptable Part B application, whereas the application would otherwise be subject to retention of all fees, the Board has held it appropriate to apply these regulations to cases such as this. Shaw Resources, supra. Accordingly, the BLM decision is affirmed as modified to find appellant's Part B application unacceptable, thus allowing return of fees tendered less a \$75 filing fee for the Part B application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified and remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

